

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2343 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HANIF ALI ISMAIL PATEL

Versus

BB SWAIN AND/OR HIS SUCCESSOR IN OFFICE

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Appearance:

MR TS NANAVATI for Petitioner

MR SJ DAVE AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Mr. T.S. Nanavati for the petitioner and learned AGP Mr. S.J.Dave for respondent nos. 1,2 and 3. The detention order dated 13.11.98 passed by respondent no.1 against the petitioner in exercise of power conferred under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (PASA for short) is challenged in the present petition under Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner under section 9(1) of the PASA, copy of which is produced at Annexure : C indicate that two criminal cases were registered against the petitioner in respect to the offences made punishable under Chapter 17 of Indian Penal Code. That the first case arising from the CR No. 86/97 was registered on 29.9.97, while another case registered vide CR No. 55/98 was registered on 15.7.98. The petitioner was released on bail in both the cases. Furthermore, the grounds indicate that 4 witnesses have supplied information regarding alleged anti-social activity of the petitioner on assurance of their anonymity. That the first witness has given statement on 25.7.98, however, the statement is vague in respect to the date of incident. It refers to the incident which is alleged to have occurred on the occasion of last Loksabha and Assembly elections where the petitioner/detenu was pressurizing the voters on the polling booth to cast votes in favour of a particular political party. The witness having taken objection was assaulted by the petitioner and injury with knife was caused.

3. The statement of the second witness is also recorded on 25.7.98, however, the incident stated therein is also vague in respect to the time and date of which such incident had occurred. It refers to the period of month of March when the examination of S.S.C. was being taken. It is alleged that the petitioner had asked the witness to take out three copies of one question paper. On refusal by the witness, assault was caused and the witness was beaten. That people gathered there on account of the alarm raised by the witness but the petitioner rushed to the people with scissor in his hand whereby the people dispersed.

4. The third witness has given his statement on 25.7.98, however, it is also vague in respect to the date and time of the alleged incident. He has referred to the period of Id-e-Milad festival, the day on which the witness was assaulted on the excuse that he has not given the amount for the cloth taken by the witness. Injury was caused to the witness by scissor. People gathered there as alarm was raised by the witness. However, as the petitioner rushed to the people with razor, the people dispersed. The fourth witness has given his statement on 31st July, 1998. He has stated about the incident alleged to have taken place on 11.7.98 in which the petitioner had a quarrel with the witness on the excuse that somebody had destroyed his crop. The witness

was assaulted and threatened of dire consequences.

5. On the basis of the above-stated material, the detaining authority has concluded that the petitioner is a "dangerous person" within the meaning of section 2 (c) of the Bombay Prohibition Act. That chapter case no. 84/98 was initiated at Amod Police Station on 20.7.98 and proceeding under section 110(E)(h) of Cr.P.C. was also pending. The detaining authority has observed that resort to general provisions of law is not likely to prevent the petitioner from continuing his anti-social activities and as such, the impugned order is passed.

6. The petitioner has challenged the order on numerous grounds. Learned advocate Mr. T.S. Nanavati has contended on behalf of the petitioner that the subjective satisfaction reached by the detaining authority while passing the detention order has been vitiated on account of inordinate delay in taking the action. Referring to the incidents stated in the grounds of detention, it is submitted that the registered cases are of July and September, dated 29.9.97 and 15.7.98 while the incidents of anonymous witnesses are concerned, they are vague in respect to the date of incidents. However, at the instance of the District Magistrate, Bharuch, the said statements were verified by Dy.S.P. on or about 26.7.98. Thus, all material in respect to anti-social activity of the petition was before the authority in July, 1998. Yet, the impugned order appears to have been passed on 13.11.98. To support the statement Shri Nanavati has referred to and relied upon the observations made by the Hon'ble Supreme Court in the matter of Pradip Nilkanth Paturkar vs. Rammurthy reported vide AIR 1984 SC 656.

7. Despite the service of rule, none of the respondents have filed any affidavit-in-reply. Learned AGP Mr. S.J. Dave attempted to salvage the issue by submitting that the period taken by the detaining authority from July, 1998 to November, 1998 in passing the order cannot be said to be an inordinate delay as administrative process require verification of statements and collection of material etc.

8. It is required to be noted that the Apex Court in the matter of Nilkanth Paturkar (Supra) has held that the delay in taking action has to be explained by the detaining authority while formulating the grounds of detention and it cannot be explained subsequently by the authority on their own material. In the instant case, the grounds of detention are devoid of any explanation

much less reasonable explanation as to why though alleged criminal activities of the petitioner were noted and verified in July, 1998, the impugned action has been taken on 13.11.98. In the absence of any reasonable explanation, I am constrained to hold that on account of inordinate delay in taking impugned action, the detention order is rendered invalid and requires to be set aside.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 13.11.98 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner Hanif Ali Ismail Patel is directed to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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